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HOUSE BILL 1094

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

GARY K. KING

AN ACT

RELATING TO WATER; AMENDING SECTIONS 62-9-1 AND 62-9-1.1 NMSA 1978 (BEING LAWS 1941, CHAPTER 84, SECTION 46 AND LAWS 1991, CHAPTER 143, SECTION 2, AS AMENDED) TO CLARIFY RESOLUTION OF DISPUTES BETWEEN VARIOUS WATER PROVIDER AND USER ENTITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-9-1 NMSA 1978 (being Laws 1941, Chapter 84, Section 46, as amended) is amended to read:

"62-9-1. NEW CONSTRUCTION. --No public utility shall, after the effective date of this 1941 act, begin the construction or operation of any public utility plant or system or of any extension of any plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation. This section shall not be construed to require any

Underscored material = new
[bracketed material] = delete

1 such public utility to secure a certificate for an extension
2 within any municipality or district within which it lawfully
3 commenced operations before the effective date of this 1941 act
4 or for an extension within or to territory already served by it,
5 necessary in the ordinary course of its business, or for an
6 extension into territory contiguous to that already occupied by
7 it and that is not receiving similar service from another
8 utility. Notwithstanding any other provision of the Public
9 Utility Act, as amended, or any privilege granted under that
10 act, if any public utility ~~[or]~~, mutual domestic water consumer
11 association organized under former laws, an association that
12 provides water service to its member organized pursuant to the
13 Sanitary Projects Act or a water users association organized
14 pursuant to the provisions of Sections 73-5-1 through 73-5-9
15 NMSA 1978, in constructing or extending its line, plant or
16 system unreasonably interferes or is about to unreasonably
17 interfere with the service or system of any other public utility
18 ~~[or]~~, mutual domestic water consumer association organized under
19 former laws, an association that provides water service to its
20 member organized pursuant to the Sanitary Projects Act or a
21 water users association organized pursuant to the provisions of
22 Sections 73-5-1 through 73-5-9 NMSA 1978, rendering the same
23 type of service, the commission, on complaint of the public
24 utility or ~~[mutual domestic water consumer]~~ other association
25 claiming to be injuriously affected, may, upon and pursuant to

.116884.1

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1 the applicable procedure provided in Chapter 62, Article 10 NMSA
2 1978, and after giving due regard to public convenience and
3 necessity, including but not limited to reasonable service
4 agreements between the utilities, make such order and prescribe
5 such terms and conditions in harmony with the Public Utility Act
6 and other applicable laws as are just and reasonable so as to
7 provide for the construction, development and extension, without
8 unnecessary duplication and economic waste."

9 Section 2. Section 62-9-1.1 NMSA 1978 (being Laws 1991,
10 Chapter 143, Section 2) is amended to read:

11 "62-9-1.1. ADDITIONAL AUTHORITY WITH RESPECT TO WATER AND
12 SEWER UTILITIES. --

13 A. Notwithstanding any other provision of the Public
14 Utility Act or any provision of the Municipal Code or any
15 privilege granted under either act, if any municipality that has
16 not elected to come within the terms of the Public Utility Act,
17 as provided in Section 62-6-5 NMSA 1978, constructs or extends
18 or proposes to construct or extend its water or sewer line or
19 system or water pumping station or reservoir into a geographical
20 area described in a certificate of public convenience and
21 necessity granted by the commission to a public utility
22 rendering the same type of service, the commission, on complaint
23 of the public utility claiming to be injuriously affected
24 thereby, shall, after giving notice to the municipality and
25 affording the municipality an opportunity for a hearing with

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1 respect to the issue of whether its water or sewer line, plant
2 or system actually intrudes or will intrude into the area
3 certificated to the public utility, determine whether such
4 intrusion has occurred or will occur. If the commission
5 determines such an intrusion has occurred or will occur, the
6 municipality owning or operating the water or sewer utility
7 shall cease and desist from making such construction or
8 extension in the absence of written consent of the public
9 utility involved and approval of the commission.

10 B. The authority and jurisdiction conferred by
11 Subsection A of this section shall be in addition and cumulative
12 to the independent authority of the commission to determine
13 territorial disputes between public utilities and between
14 [~~mutual domestic water consumer~~] other associations specified in
15 Section 62-9-1 NMSA 1978 and public utilities [~~as provided~~
16 ~~in Section 62-9-1 NMSA 1978~~] which cited provisions shall
17 govern the resolution of a territorial dispute between a
18 municipality that has elected to come within the terms of the
19 Public Utility Act, as provided in Section 62-6-5 NMSA 1978, and
20 any other public utility or association specified in Section 62-
21 9-1 NMSA 1978 rendering the same type of service. Provided,
22 however, in the event that a certificate of public convenience
23 and necessity granted to such a municipality overlaps or
24 conflicts with a valid certificate previously issued by the
25 commission and exercised within the term required under Section

.116884.1

1 62-9-4 NMSA 1978, the municipal utility shall be permitted to
2 continue operation of its plant, line and system in existence
3 upon the effective date of this 1991 act and the other public
4 utility may continue service in the area covered by its
5 certificate, subject to the other provisions of the Public
6 Utility Act.

7 ~~[C. For purposes of this section, "municipality"~~
8 ~~means any municipality that has a population of more than two~~
9 ~~hundred thousand as determined in the most recent federal~~
10 ~~decennial census and is located in a class A county.]"~~

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